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**The Europeanisation of  
German environmental policy:  
From environmental leader to  
member state under pressure?**

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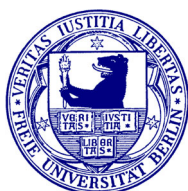
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# 1 Introduction

Germany<sup>1</sup> was a founding member of the European Union (EU) and has traditionally been one of the most pro-integrationist member states. It became an environmental pioneer on the domestic level in the 1970s and adopted the role of an environmental leader state on the international and supranational European Union (EU) level in the 1980s (Andersen and Liefferink, 1997; Jänicke and Weidner, 1997; Liefferink and Andersen, 1998; Müller, 1986; Pehle, 1997, 1998; Weale, 1992a, 1992b; Weale *et al.*, 2000; Weidner, 1999; Wurzel, 1996, 2002). In the 1970s and 1980s, Germany often 'uploaded' to the EU level relatively ambitious domestic environmental standards and regulatory principles (Börzel, 2000, 2002; Héritier *et al.* 1996; Knill, 2001). Alternatively, it took the lead by adopting nationally more stringent environmental policy measures where this was permitted by the EU Treaties (Krämer, 1990). German policy makers therefore saw themselves very much as one of the main driving forces behind EU environmental policy. It is therefore unsurprising that the impact of the Europeanisation process on member state environmental policies was downplayed or simply taken for granted by German policy makers during the 1970s and 1980s (although there were a few dissenting voices as will be shown below).

Post-unification Germany has lost some of its environmental zeal. Public environmental awareness has moderately declined (albeit from a high level) and German governments have become more cost-conscious. Since the early 1990s, Germany has come under pressure from the EU to reform its environmental regulatory style and preferred environmental standard setting philosophy (Albin and Müller-Kraenner, 1999; Friedrich *et al.*, 2000; Héritier *et al.*, 1996; Knill, 2001; Knill and Lenschow, 1998; Kraack *et al.*, 2001; SRU, 1998, 2002; Wurzel, 2003a, 2003b). German environmental policy makers have therefore complained about a growing mismatch between domestic and EU preferences in the environmental policy field (see, for example, Baacke, 2000).

This research working paper takes a longitudinal perspective when assessing the impact of the Europeani-

sation process on the German environmental policy system which, for analytical purposes, will be disaggregated into policy style, content and structures following Peter Hall's (1986, 1990) influential classification. The analytical focus of this paper stretches from the origins of EU environmental policy in the early 1970s up to the reelection of the Red-Green (SPD-Greens) coalition government in 2002. It therefore follows Paul Sabatier's (1999) advice that (changes in) public policy should be studied over a period of several decades. The long term perspective is also justified by the fact that the effectiveness (or ineffectiveness) of environmental policy measures frequently become clear only after a considerable time lag (Wurzel, 2002, 51).

The Europeanisation process of German environmental policy is not a one-way process. It will be argued instead that it constitutes a two-way process in which both the 'uploading' and 'downloading' of styles, standards and structures often takes place simultaneously (see also Goetz and Dyson, 2003). Moreover, even environmental leader states will experience certain adaptation pressures from EU environmental policy measures because they are, as Albert Weale (1996, 607) has explained, 'aggregated and transformed standards of their original champions modified under the need to secure political accommodation from powerful veto actors'. However, (the full extend of) the adaptation pressures often become clear only during the implementation phase. There is therefore often a considerable time lag because the implementation deadline can be considerable for some EU environmental policy measures (for example, the water framework directive (2000/60/EC) stipulates implementation deadlines which exceed one decade).

This paper starts by outlining the domestic attitudes towards European integration and environmental protection amongst both the political elites and the general public. It then puts forward a brief overview of the impact of the Europeanisation process on the wider German political system. The remainder of this paper assesses the Europeanisation process on the German environmental policy style, content and structures while the conclusion summarises the main findings.

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<sup>1</sup> The term Germany refers to the Federal Republic of Germany both before and after unification.

## 2 National Attitudes towards European integration

After the Second World War, Germany adopted 'a policy of self-restraint' (Bulmer et al., 2000, 1). It strongly supported European integration in order to achieve reconciliation with neighbouring countries and France in particular. Germany's high dependence on an export driven industrial base after the economic miracle (*Wirtschaftswunder*) of the 1950s, made Germany a strong advocate of the creation of a Single European Market (SEM). German Chancellors therefore had strong political and economic reasons for supporting a deepening of European integration.

Constrained by its past, Europe's economic giant and political dwarf 'deliberately punched below its weight' (Paterson, 1996, 170). Germany was reluctant to take on a leader role in Europe and instead became a 'reflexive multilateralist' (Bulmer et al., 2000, 53; Hyde-Price and Jeffery, 2001, 690; Paterson, 2000, 32). It relied strongly on joint initiatives – and close cooperation with France in particular – to foster deeper European integration. The environmental policy field, in which the Franco-German axis played no important role mainly due to different national problem perceptions and policy preference (Héritier et al., 1996; Müller-Brandeck-Bocquet, 1996), remained the most important exception to this tool.

Senior state (*Land*) politicians have frequently expressed concern about the federal government's readiness to transfer to the EU level powers which, under the German constitution, fall within the competences of the *Länder*. Bavaria has been particularly outspoken in this regard (Hyde-Price and Jeffery, 2001; Wurzel, 2002, 238-9). Its Prime Minister, Edmund Stoiber (CSU), nicknamed 'Edmund Thatcher' (*Süddeutsche Zeitung*, 2 November 1993; *Die Zeit* 5 November 1993), has criticised the federal government and 'Brussels' for breaching the principle of subsidiarity which has had quasi constitutional status in Germany long before it was introduced in the EU. However, Stoiber toned down his 'Euro-assertiveness' (Bulmer et al., 2000, 80) when he acted as the Chancellor candidate for the conservative opposition parties (CDU/CSU) in 2002 (*Frankfurter Allgemeine Sonntagszeitung*, 10 February 2002). Despite the growing 'national interest' rhetoric, post-unification Germany has remained the only large member state which fully supports both a deepening and widening of the EU (Bulmer et al., 2000). Euroscepti-

cism is a taboo subject within mainstream political parties. It is largely confined to fringe parties.

However, in recent years the gap between Germany's political elite, which has remained broadly sympathetic towards deeper European integration, and the general public, which remained less convinced about the benefits of EU membership, has widened. Public support for the EU in Germany (and especially the former East Germany) has waned and fell below the EU average at the beginning of the twenty-first century (CEC, 1994, 75; 2001, 38). So far this has not led to an erosion of the overwhelming cross-party support for the EU and deeper European integration within the parliament (*Bundestag*). This has arguably allowed German governments to take a medium to long term strategic view of European integration rather than having to justify each integrationist step on the basis of whether it fulfils short term national interests as is the case in more Euro-sceptic member states (Bulmer et al., 2000).

Germany's EU balance sheet is, overall, very positive, if one accepts that German politicians had the following five fundamental national objectives when agreeing to EU membership in the 1950s (Hrbek, 1986, 27). First, peace and security; second, economic reconstruction and recovery; third, to build up and consolidate liberal democracy; fourth, reunification; and fifth, restoration of national sovereignty. EU membership greatly facilitated German attempts to achieve all of these objectives. Considering the initial opposition from the French and British governments it is difficult to imagine how speedy unification could have taken place outside the EU framework.

International relations realist theory has argued that the historical reasons for supporting deeper European integration in Germany will wane over time, making it a more 'normal' member state that will not shy away from defending its (short term) national interests. Recent developments seem to support this view. Gerhard Schröder (SPD), who, in 1998 succeeded the strongly pro-integrationist Helmut Kohl (CDU), is the first German Chancellor to be born after the Second World War. Schröder 'purposefully introduced a new discourse of national interest into German European policy debate' (Hyde-Price and Jeffery, 1991, 698) when he stated that

*"my generation and those following are European because we want to be not because we have to be. ... I am sure that our European partners want to*

*have a German partner which is more calculable than a German partner with an inferiority complex. Germany standing up for its national interests will be just as natural as France or Britain standing up for theirs" (cited in Bulmer et al., 2000, 109; Hyde-Price and Jeffery, 2001, 700).*

Schröder put his words into action when he intervened on behalf of the domestic automobile industry during the 1999 German EU Presidency (Bulmer et al., 2000, 26; Müller, 2002; Wurzel 2000) and refused to accept the Commission's warning letter regarding Germany's breach of the stability pact. Moreover, he repeatedly accused the Commission of disregarding German interests in the run up to national elections in 2002 (*Financial Times*, 11.03.2002; *Frankfurter Allgemeine Zeitung*,

22.03.2002). In doing this he explicitly referred to competition policy and environmental policy (*Frankfurter Allgemeine Zeitung*, 08.03.2002). However, Schröder also called for a deepening of European integration and has supported Eastern enlargement while backing down from his initial demands during the Agenda 2000 negotiations that Germany's budgetary contribution be reduced significantly before the next enlargement (Laffan, 2000; Wurzel, 2000). At the Copenhagen summit in late 2002, Chancellor Schröder confirmed his willingness to support the wider 'European project' by agreeing that Germany would have to accept a higher financial burden in order to ease the EU's Eastern and Mediterranean enlargement.

### 3 National attitudes towards the environment

The environment policy field is one of only a few areas where Germany has taken on an explicit leader role within the EU. However, Germany took on an environmental leader role within the EU and on the international level only in the early 1980s despite the fact that it had adopted a relatively ambitious domestic environmental programme already in the early 1970s (Andersen and Lieferrink, 1997; Boehmer-Christiansen and Skea, 1991; Jänicke and Weidner, 1997; Müller, 1986; Pehle, 1998; Weale, 1992a, 1992b; Weale et al., 2000; Wurzel, 2002). Germany's new role was largely triggered by concerns about dying forests (*Waldsterben*). Scientific studies, which concluded that air pollutants were the main causes of *Waldsterben*, attracted huge media attention and considerable environmental interest group action thus leading to an upsurge in public environmental awareness. The environment became a salient political issue for all mainstream political parties also because the Green Party entered the national parliament in 1983. Unusually for a pro-integrationist member state, Germany threatened to 'go it alone' if the EU refused to accept its demands for the introduction of the best available technology (BAT) to reduce car emissions (which, at the time, was the three-way catalytic converter) (Arp, 1995; Boehmer-Christiansen and Weidner, 1995; Holzinger, 1994; Weale et al. 2000, 309-407; Wurzel, 2002). The long drawn out car emission saga seemed to confirm the widely held view in Germany that the EU acted as a brake on domestic environmental policy (see Holzinger, 1994; Pehle, 1998, 239-59; Scharpf, 1988; SRU, 1974, 191-2). German critics of EU environmental policy were able to point at other examples such as the directive regulating the sulphur content

of certain liquid fuels (75/176/EEC), the lead content in petrol (78/611/EEC) and the large combustion directive (88/609/EEC) which all constituted watered down versions of German initiatives.

The German public has traditionally been one of the most environmentally aware of all member states (CEC, 1995, 1999). However, while in 1988 there was a difference of ten percentage points between the EU and German averages regarding the number of people who thought that environmental problems were 'an urgent and immediate problem', the difference had declined to merely one percentage point by 1999 (CEC, 1999; Wurzel, 2002, 15). Since the 1990s, the environment has been displaced as one of the top three political public priorities by issues such as unemployment, welfare reforms and terrorism. However, the decline in environmental awareness seems to have bottomed out since 2000 (UBA, 2001).

In 1978, the German Environmental Expert Council (*Sachverständigenrat für Umweltfragen* - SRU) already pointed out that some EU environmental policy measures (such as certain water quality standards) were in fact more stringent than existing German policy (SRU, 1978). Moreover, the SRU (1978, 514) argued that the EU could one day become an innovating force for German environmental policy. However, it was only from the 1990s onwards that German policy makers realised that they had underestimated the effects of the process of Europeanisation on the domestic environmental policy system (Baacke, 2000; Héritier et al., 1996; Pehle, 1998; Knill and Lenschow, 1998; Knill, 2001; Kraack et al., 2001; SRU, 1998; Wurzel, 2003a, 2003b).

## 4 The Europeanisation of Germany

Germany's Nazi past and division into East and West goes a long way towards explaining why German politicians initially opted for self-restraint and have often found it difficult to defend the national interest within the EU. So far, German Chancellors and Ministers have only rarely invoked the national veto within the EU (George, 1996, 82; Sturm and Pehle, 2001, 47; Wurzel, 2000). Especially Britain and France, which have centrally co-ordinated EU policies, have often expressed frustration at what they perceive as Germany's frequent inability to arrive at a clear national position prior to EU negotiations (Bulmer et al., 2000; Wurzel, 2002, 61).

However, there are also important institutional constraints which militate against the co-ordination of a coherent national EU position. Unified Germany has remained internally a 'semi-sovereign state' (Katzenstein, 1987), because as a federal state it is 'a state without centre' (Smith, 1992) within which 'the power of state officials is both severely circumscribed and widely diffused' (Katzenstein, 1987, XXIII: see also Katzenstein, 1997). The federal system, relatively high Ministerial independence (*Ressortprinzip*) and coalition government make it difficult for any German government to come up with a clear national position (Wurzel, 2000, 24). Moreover, German governments have to take into account the actions of powerful 'parapolitical institutions' (Katzenstein, 1987) such as the Constitutional Court and the Central Bank. Unsurprisingly Germany's EU policy has therefore often been described as 'sectorally disaggregated, weakly coordinated and, at times, highly disorganised' (Hyde-Price and Jeffery, 2001, 707; see also Bulmer and Paterson, 1996; Demmke, 1994, 1998, 1999; Derlien, 2000; Goetz, 1996; Paterson, 1996; Wurzel, 2000; 2002, 61-2; 2003a, 2003b).

Hans-Ulrich Derlien has argued that the German 'fire brigade' approach ... [and] its reactive style and management by exception may be well suited to the kind of incremental decision making in a multi-level game' (Derlien, 2000, 75) such as EU policy-making. However, recent complaints about the alleged neglect of German national interests in Brussels and proposals raised during the 2002 election campaign by both Chancellor Schröder and the main opposition party's Chancellor candidate, Edmund Stoiber (CSU), to create a European Minister within the German government suggest that important political actors think differently (*Frankfurter Allgemeine Zeitung*, 8.3.2002).

The German constitution, institutional set up and decision-making procedures are nevertheless often seen as particularly well adapted to the European integration process (Bulmer, 1986; Bulmer et al., 2000; Bulmer and Paterson, 1996; Derlien, 2000; Goetz, 1996; Maurer and Wessels, 2001). The German constitution explicitly allows for the transfer of national powers to supranational organisations (Article 24) while German politicians and officials have widely accepted pro-integrationist core beliefs and norms. Moreover, due to the domestic federal system they are familiar with multi-level political system within which policy-making depends to a large degree on consensus seeking. How can the alleged congruence between German and supranational multi-level policy-making structures and fundamental goals be reconciled with recent domestic demands for better representation of German national interests in Brussels? One explanation is that German EU policy is 'good on strategy, less good on tactics' (Bulmer et al., 2000, 9). To put it differently, for historical reasons German EU policy has traditionally focused more strongly on medium to long term goal achievement rather than on short term (economic) gains which is not to argue that German negotiators failed to strike a hard bargain in EU negotiations. However, there are signs that German EU policy entered a new phase in the late 1990s during which short term national (economic) benefits have become more important as a justification for agreeing to EU policy measures and further integrationist steps. The cost of unification and sluggish economic performance in the 1990s has made German politicians more cost-conscious.

As will be discussed in more detail in section 5.3, the co-ordination of German EU policy largely takes place horizontally (i.e. between different ministries) although the Chancellor, who determines the policy guidelines, occasionally intervenes. EU policy issues are discussed frequently in cabinet meetings although the cabinet committee for European affairs plays only a minor role. In the late 1990s, Germany streamlined its EU policy co-ordination machinery (Bulmer et al., 2000; Derlien, 2000; Maurer and Wessels, 2001; Wurzel, 2003a, 2003b). However, it has not become strongly centralised, especially when compared to Britain and France.

There is a burgeoning foreign policy literature which focuses on unified Germany's role in the new Europe. It portrays Germany largely as a 'civilian' (Mauil, 1990) or



'tamed' (Katzenstein, ed., 1997) power which remains committed to deeper European integration (Bulmer *et al.*, 2000; Garton Ash, 1994; Webber, ed., 2001) although there are some dissenting voices which suggest that Germany will re-assess its European/foreign policy options (Baring, 1996; Mearsheimer, 1990). The public policy literature on the Europeanisation of the German governance system is still largely underdeveloped (see, for example, Goetz and Dyson, 2003; Rometsch, 1996; Sturm and Pehle, 2001). An important reason for this is that the Europeanisation of Germany was until recently largely taken for granted or its effects on German policy styles, standards and structures were down-played.

A recent study by Roland Sturm and Heinrich Pehle (2001) on different institutions, decision-making procedures and policy fields in Germany concludes that Europeanisation has had a significant but highly variegated impact what they term 'the *new* German governance system'. Out of five policy fields analysed, agriculture and monetary policies are seen as having been most affected by Europeanisation. They are closely followed by environmental and regional policies while justice and home affairs were least, although still significantly, affected. The policy content of the five policy fields was judged overall to have been more affected than domes-

tic institutions such as the federal government, parliament and the *Bundesrat* or political parties. However, the constitutional court and interest groups as well as, although to a lesser degree, the *Länder* were all seen as having been strongly affected by the EU. These findings are broadly compatible with Hall's view (1983, 1990) that the policy content changes more easily compared with domestic political structures and styles.

Sturm and Pehle's claim that certain policy fields in Germany (most of all economic and monetary policy, competition policy and agriculture policy followed by environmental policy and regional policy) have been strongly Europeanised is widely accepted. However, over time the EU has not only affected an increasing number of policy fields (such as energy policy, justice and home affairs and even foreign policy) but has also left its mark on core domestic institutional actors (such as the Central Bank, Constitutional Court and the *Länder*). The German policy style, which is often described as pro-active and consensus seeking or even corporatist (Dyson, 1982) has also come under pressure from the EU as can be seen from the recent debate about the future of the German 'economic model' (*Modell Deutschland*).

## 5 The Europeanisation of German Environmental Policy

Until the early 1990s, the Europeanisation of German environmental policy attracted relatively little scholarly attention although there are some exceptions (for example, Bungarten, 1978; Moltke, 1984, 1986; Krämer, 1988; Kromarek, 1986, 1989; Weinstock, 1984). For much of the 1980s, Germany acted as an environmental leader state and was one of the main driving forces behind EU environmental policy. The German public and many domestic policy makers therefore simply

assumed that German environmental policy was only marginally affected by the EU although some studies warned this was not actually the case for reasons which will become clear later when German environmental policy is disaggregated according to its policy style, content and structures. Since the 1990s, Germany has lost some its environmental credentials and is widely seen as having increasing difficulties in adapting to certain EU environmental policy measures.

### 5.1 Policy style

When trying to solve public policy problems, German governments are usually seen as having adopted a moderately active stance which relies heavily on consensus and consultation (Dyson, 1982; Dyson, 1992; Jänicke and Weidner, 1997; Paterson, 2000, 37). The traditional German policy style, whose roots can be traced to the nineteenth century (Beyme, 1985), featured 'corporatist' elements because government consultation extended mainly to employers and unions while environmental groups were largely excluded (Jänicke

and Weidner, 1997; Katzenstein, 1987; Kitschelt, 1986; Paterson, 1989; Rose-Ackermann, 1995).

The government's moderately active and consensus seeking stance towards solving public policy problems is compatible with a social market economy (*soziale Marktwirtschaft*) which allows state actors to set the framework conditions (*Ordnungspolitik*) for private actors. The social market economy doctrine became widely accepted as a macro-political action guiding norm for German policy makers after the economic miracle of

the 1950s (Dyson, 1992). In the late 1980s there was wide cross-party support for developing the social market economy further into a 'social and ecological market economy' (*soziale und ökologische Marktwirtschaft*) (Jänicke, 1993; Töpfer, 1989; Schröder, 1989). However, this move was largely abandoned in the 1990s when German policy makers had to come to terms with the economic impact of unification and an increasingly fierce debate about Germany's future as a production and investment location within the global economy (Harding and Paterson, 2000). Within the '*Standort Deutschland*' debate questions have been raised about the future of the 'German model' which is widely seen as an alternative to Anglo-Saxon capitalism (Harding and Paterson, 2000; Hodges and Woolcock, 1993)

In Germany, the Commission's recent preference (see, for example, CEC, 2000, 2001) for soft and self-regulatory environmental policy instruments (such as procedural measures and informational devices) has therefore been connected to a much deeper national debate about the future of the 'German model'. Some policy actors in Germany (such as the Economics Ministry) have welcomed a less interventionist approach to environmental policy which relies more strongly on the principle of 'shared responsibility' as outlined in the Fifth Environmental Action Programme (EAP). However, the BMU has remained largely unconvinced about the effectiveness of the EU's new 'softer' approach and emphasis on procedural measures which it fears could lead to a roll back of hard won domestic (and EU) achievements in the environmental policy field (interviews in 2001).

Klaus von Beyme (1985, 5) has warned that broad generalisations about 'a national style of policy-making tend to obscure historical changes over time, variations between fields of policy and the differences between the role of various parties.' This assessment holds true for Germany where environmental policy and EU policy styles have evolved over time due to indigenous domestic changes and, although to a lesser degree, Europeanisation pressures (as well as global developments). However, these changes have taken place only incrementally due to 'structural' constraints (i.e. institutional and constitutional constraints) as well as 'cultural' constraints (i.e. widely accepted and deeply embedded action guiding norms about the role of state actors within a social market economy and Germany's place in Europe).

In 1969, at a time when environmental awareness was still relatively low (SRU, 1974), a newly elected Centre-Left government took a pro-active stance towards environmental policy which formed part of its wider reform agenda (Genscher, 1980; Hartkopf and Bohne, 1983; Müller, 1986; SRU, 2002; Weidner, 1999). In the early 1970s, it set up administrative capacities for dealing with environmental policy while adopting an ambitious national environmental programme and a wide range of environmental standards. The government also financed the setting up of environmental groups and encouraged extensive consultation with a wide range of actors (Hartkopf and Bohne, 1983). However, there was a return to more traditional corporatist consultation patterns after the first oil crisis in 1973 sent the German economy into recession and domestic environmental policy into a 'defensive phase' (Müller, 1986). By the late 1970s, domestic environmental policy started to recover (Müller, 1986) and Germany adopted an environmental leader role within the EU (and on the international level) in 1982. However, it was only in the late 1990s that the government again placed more emphasis on wider consultation while actively trying to include environmental groups (Jänicke and Weidner, 1997).

Herbert Kitschelt's (1986) assessment that the German environmental policy-making process is characterised by 'closed opportunity structures' for environmental groups holds true only for a particular period of time and is more relevant for certain sub-sectors (such as nuclear power) than others (for example, eco-labels) (see also Paterson, 1992; Rose-Ackermann, 1995; Rüdiger, 2000). It explains why German environmental groups relied heavily on the courts during the 'post-decisional phase' in order to influence the environmental policy outcome within a political system which is characterised by a high degree of juridification due to a strong state law (*Rechtsstaat*) tradition. However, it fails to account for the fact why, unlike their British counterparts, German environmental groups have largely failed to lobby 'Brussels' in order to influence (domestic and EU) environmental policy. Christian Hey and Uwe Brendle (1994) have argued that German environmental groups hold strong principled beliefs and are less geared toward success-oriented lobbying than their British counterparts. Many German environmental groups have perceived the EU mainly as a free trade area which acts as a brake on domestic environmental policy. However, since the 1990s, there has been a change in attitude and strategy towards the EU environmental policy.

Several German environmental groups have since become significantly more active on the EU level as can be seen, for example, from the German Nature Circle's (*Deutscher Naturschutzring* - DNR) monthly EU circular (DNR, various years). This change is more a reflection of the fact that Germany has lost some of its environmental credentials since the 1990s rather than proof for the continued existence of closed national opportunity structures. However, the EU's access to information directive has granted German environmental groups greater access to national environmental policy information. A Centre-Right German government initially tried to resist the adoption of this EU directive which has remained unpopular with the administration (especially on the *Länder* level). It also refused to sign the so-called Aarhus Convention which granted similar access to environmental information rights. However, it was later signed by a newly elected Red-Green government.

Germany has overall been very active on the EU level in the environmental policy field. However, Germany's EU environmental policy style has ranged from pro-active (for example, car emission regulation and climate change) to reactive (for example, environmental impact assessment). Overall Germany has concentrated mainly on uploading domestic guiding standards and policy principles while neglecting both the 'politics of staffing' and the importance of presenting a coherent national position early on in the decision-making process (Wurzel, 2002, 2003a, 2003b). Germany has been very active in attending Commission and Council environmental working groups where German officials generally have a reputation of high technical competence although their diplomatic skills are not always valued to the same degree (interviews, 1998). Germany has also seconded to the Commission a considerable number national experts on issues of domestic priority (for example, car emission regulations). However, considering

that Germany was one of the main driving forces behind EU environmental policy during much of the 1970s and 1980s, it is surprising that no German national has ever acted as Director-General and Deputy Director General within DG Environment. Only one German national has been appointed Commissioner in charge of DG Environment. However, Karl-Heinz Narjes, who headed both DG Environment and DG Industry from 1981-85, was not renowned for having been an environmentally zealous Commissioner.

The alleged under-representation of German nationals within DG Environment has been discussed in Germany on the highest political level (Wurzel, 2002, 65-6, 2003a, 2003b; interviews 2001). The German government has recognised the importance of lobbying early on the Commission (and other member states) during the EU policy formulation process. However, Germany has often found it very difficult to adopt a clear national position at the start of the EU decision-making process due to the structural constraints which will be explained below. This has occasionally hampered Germany's chances of influencing Commission proposals. The recent recalibration and centralisation of the German EU policy machinery is partly a reaction to these coordination problems. However, they are difficult to solve because there are limits to the degree of centralisation which can be imposed upon a federal state which has a tradition of relatively independent ministries that are governed by different political parties. Moreover, the lack of a clear national position does not always work against German governments in achieving their national aims within the EU. Pointing out that domestic constitutional constraints or opposition from the *Länder* make it impossible to agree to a particular EU environmental policy measure or even a new Treaty provision can be a powerful negotiating chip.

## 5.2 The Europeanisation of policy content

Germany is a 'high regulatory state' (Héritier, 1996; Héritier *et al.*, 1996) which has adopted a relatively dense body of environmental legislation (Kloepfer, 1998). The environmental policy field fits the claim that German politics is characterised by a high degree of juridification (Dyson, 1982; Dyson, 1992; Weale, 1992b). Some estimates put the number of domestic environmental laws at as high as 35,000 (Müller-Brandek-Bocquet, 1996, 138) although this figure includes federal and *Länder* laws as well as relatively minor technical

implementation laws (interview with UBA official in 2001). Due to its strong reliance on legal rules, Germany has made wide use of the EU's information and standstill agreement which stipulates that the Commission should be informed about draft national environmental legislation with a potential impact on the SEM in order to allow for the adoption of EU legislation instead (SRU, 1978, 512-14; Reh binder and Stewart, 1985, 17; Wurzel, 2002, 75-8). However, there were also a few occasions when Germany failed to inform the Commis-

sion about draft national environmental legislation under the standstill agreement - which was merely a gentlemen's agreement - because the government was concerned that it might lead to a watering down of national standards (SRU, 1978; Wurzel, 2002, 102).

The bulk of early EU environmental legislation dealt with harmonisation measures (such as car emission regulations) which were designed to prevent new barriers to trade (Rehbinder and Stewart, 1985). Due to its relatively high ecological vulnerability at the centre of Europe and an export driven industry, Germany had a strong ecological and economic interest in pushing for EU harmonisation measures (Grant *et al.*, 1988, 245-65; Weale, 1992b; Weale *et al.*, 1991; Wurzel, 2002).

However, the EU also adopted environmental laws which had only a tenuous link with the SEM. Moreover, many of these measures (such as directives on bathing waters (76/160/EC) and the protection of birds and their habitats (79/409/EEC)) had no base in German environmental law. EU environmental laws therefore influenced the content of German environmental policy from the 1970s onwards although initially only to a moderate degree because, like most member states, Germany found it easier to agree to ambitious EU policy measures than to implement them on the ground. However, from the 1980s onwards the Commission adopted a proactive approach to taking member states to the European Court of Justice (ECJ) for failing to implement correctly EU environmental laws. Germany subsequently lost several ECJ cases (on issues such as bathing water, drinking water and environmental impact assessment) which triggered a gradual adaptation of the domestic environmental policy system to suit better the EU environmental governance system.

### *Policy goals and objectives*

Following the adoption of a relatively progressive Environmental Programme in 1971, Germany adopted a wide range of major environmental laws. Early examples include the 1974 Water Management Act and the 1974 Federal Ambient Air Pollution Act (*Bundesimmissionsschutzgesetz*) which has been called the 'magna carta' of German air pollution control (Genscher, 1980, 120; Müller, 1986). These environmental acts set the legal framework and outlined the general policy principles such as the BAT. They were followed up by detailed technical laws and regulations (such as the Technical Instructions for Air).

German environmental policy has made wide use of traditional ('command-and-control') regulation (*Ordnungsrecht*) which stipulates emission limits at the source of pollution (such as the chimney of a power plant) and environmental quality objectives (EQOs) for a particular part of the environment (such as a river). Overall Germany has relied more heavily on emission limits which are often derived from the BAT principle. The BAT principle, which can be traced to nineteenth century Prussian trade ordinances (Hartkopf and Bohne, 1983; Müller, 1986; Wey, 1982; Wurzel, 2002, 2003c), has led to the proliferation of detailed environmental laws and a focus on different environmental media (air, water and soil) instead of a more holistic pollution control approach (Jänicke and Weidner, 1997; Weale *et al.*, 1991, 2000).

The wide use of the BAT principle in modern day German environmental policy was encouraged by the adoption of the precautionary principle (*Vorsorgeprinzip*) which legitimises pollution abatement measures even in the absence of scientific proof where there is a significant risk that (irreversible) environmental damage would otherwise occur. However, a balance has to be struck between the precautionary principle and the principles of proportionality (*Verhältnismäßigkeitsprinzip*) and cooperation (*Kooperationsprinzip*) which were all stipulated in the 1971 Environmental Programme (Hartkopf and Bohne, 1983; Müller, 1986; Wey, 1982). The BAT principle is therefore open to interpretation and cost considerations. Some of the guiding principles of the 1971 Environmental Programme found their way into the EU's 1973 First EAP. Germany later also successfully uploaded the precautionary principle into the EU Treaty.

Stringent domestic environmental measures were demanded by proponents of the concept of ecological modernisation who gained considerable support in Germany during the 1980s for their claim that this would be beneficial to both the environment and the economy (Jänicke, 1993; Töpfer, 1989; Schröder, 1989; Weale, 1992a; Weale *et al.*, 2000; Wurzel, 2002). The emergence of a highly successful export oriented German pollution control technology industry seemed to confirm these claims (UBA, 1997). However, the adoption of the BAT principle in Germany imposed considerable short term economic costs on domestic industries which, for competitive reasons, were keen to see an uploading of German standards to the EU in order to achieve a level playing field. Many environmental NGOs also supported strict EU-wide emission limits in order to prevent eco-

logical dumping and to protect the unspoilt environment. The ambition to export to the EU level the German approach to environmental policy therefore received considerable domestic support.

However, member states which had adopted a different regulatory philosophy or attributed only a low priority to environmental issues were opposed to the setting of relatively stringent emission limits derived from the BAT principle. It was especially during the adoption of the directive on the discharge of dangerous substances into water (74/464/EEC) when serious Anglo-German disputes erupted. German demands to adopt stringent emission limits was supported by most continental member states and especially Denmark and the Netherlands. However, Britain and Ireland insisted on the adoption of a more flexible EQO centred approach while arguing that their environment had a higher carrying capacity (Bungarten, 1978, 197-210). Because unanimity was required for the adoption of EU environmental legislation until 1987, a compromise solution had to be found which allowed for a 'parallel approach' (i.e. emission limits *or* EQOs) widely seen as unsatisfactory by German officials (Möbs, 1991). However, occasionally the political deadlock could not be resolved as was the case for a Commission proposal regulating the pulp and paper industry. It was never adopted due to this particular conflict.

The Anglo-German dispute about the best approach to pollution control subsided during the late 1980s. In 1988, Germany used its EU Presidency to organise a ministerial seminar in Frankfurt on water policy, the sector where Anglo-German differences were initially most pronounced (Möbs, 1981, 124-6; Krämer, 1996; Rüdiger and Krämer, 1994; Wurzel 1996, 283; 2002, 26). The seminar seemed to resolve some of the disputes by suggesting a combined approach (i.e. the adoption of emission limits *and* EQOs in an accumulative manner) for EU environmental policy which would reflect core features of the German and British (as well as other member states') pollution control philosophies. However, during the long drawn out negotiations for the water framework directive (2000/60/EC), some of the earlier Anglo-German disputes resurfaced despite the fact that the directive formally adopted a combined approach (interviews with UBA officials in 2001).

However, much to the dismay of the Netherlands, which is a Rhine downstream country, Germany, has not always been consistent in its approach to water pollution control in particular. In the 1970s, there were occasions

when Germany actually sided with the British government and watered down several EU pollution control measures out of fears that it would otherwise harm important economic interests such as the chemical industry which is located close to the river Rhine (Grant *et al.*, 1988; Moltke, 1984; Müller, 1986).

In the 1970s, EU environmental policy drew heavily on EQOs. In the 1980s, the Commission's Directorate-General for the Environment (DG Environment) became more receptive to the BAT principle. This was partly due to German pressure and partly out of necessity as there was only insufficient environmental data for adopting a more ambitious common environmental policy based on an EU-wide EQO centred approach (Wurzel, 2002, 69-70). However, in the 1990s, the Commission returned to its earlier preference for an EQO-centred approach and moved away from a BAT derived emission limits approach as can be seen, for example, from the controversial Auto-Oil I programme (Friedrich *et al.*, 2000). Since the 1990s, the Commission has placed more emphasis on cost-effectiveness, framework directives and procedural measures while the publication of proposals for detailed regulations has slowed down (Héritier *et al.*, 1996; Knill, 2001; Knill and Lenschow, 2000; Kraack *et al.*, 2001; Liefferink, 1996; Pehle, 1997, 1998; Wurzel, 2003a, 2003b). This shift can be partly attributed to successful lobbying from the British government. However, the debate about the principle of subsidiarity, economic recession and the growing maturity of EU environmental policy are also important factors which led DG Environment to search for less intrusive and more cost-efficient policy measures (Wurzel, 2002, 68-70).

Some of the EU's recent procedural measures (for example, on environmental impact assessment (85/366/EEC), freedom of access to environmental information (90/313/EEC), integrated pollution prevention and control (96/61/EC), eco-management and audit systems ((1836/93/EEC)) and framework directives (such as the water framework directive (2000/532/EC)) have triggered considerable domestic adaptation pressures in Germany (Héritier *et al.*, 1996; Knill and Lenschow, 2000; Kraack *et al.*, 2001; Pehle, 1997, 1998; Wurzel, 2003a, 2003b). These adaptation pressures relate mainly to the domestic structures (i.e. the institutional 'fit' or 'misfit') and, though to a lesser degree, the dominant style (i.e. the relationship between government and societal actors) and will therefore be discussed below.

The EU's recent preference for procedural environmental policy measures, which have been variously attributed to either 'British' (Héritier *et al.*, 1996; Pehle, 1998, 235), 'Anglo-Scandinavian' (Baacke, 2000) or 'Anglo-American' (Kloepfer, 1998, 614) influence, has also affected the domestic policy content. Some of these measures are seen as 'alien to the German approach' and considered a danger to the BAT principle because they rely heavily on informational rather than regulatory policy tools (interviews with BMU officials in 2001). Moreover, many of the EU's procedural measures adopt an integrated pollution control approach which cuts across different environmental media while German environmental law is still largely geared towards the implementation of the BAT principle on a medium by medium basis. Largely due to unresolved disagreements about environmental competences between the federal government and the *Länder*, Germany has so far failed to adopt a national environmental code (*Umweltgesetzbuch*) which would have pulled together the relatively specialised media centred environmental laws.

The German government has therefore either sought to alter some of the procedural measures during the adoption process or to divert the adaptation pressures during the implementation phase. In the case of the integrated pollution prevention and control directive, Germany used its EU Presidency in 1999 in order to push for the insertion of the BAT principle (Wurzel, 1996, 285). The environmental impact assessment directive was initially implemented in such a way that it lost much of its cross-cutting approach. However, the German government had to alter its implementation legislation after it lost an ECJ case in 1996 (Kloepfer, 1998, 238-9). Ironically, Germany had been one of the pioneers in Europe when it adopted national legislation for environmental impact assessment in 1975 (Hartkopf and Bohne, 1983, 98-9; Kloepfer, 1998, 237-8). However, its effectiveness was severely curtailed due to the fact that it was only of secondary importance compared to more specialised (media centred) environmental laws (such as the Federal Ambient Air Pollution Act) which often prescribed the BAT.

### *Policy instruments*

The EU also had an impact on the national policy instrument repertoire (Wurzel *et al.*, 2003c). Traditional regulation is the most widely used environmental policy instrument in Germany. However, voluntary agreements (VAs) have also played an important role (UBA, 1999). Germany and the Netherlands have used by far the

highest number of VAs in the EU (Jordan *et al.*, 2003). German VAs are usually adopted 'in the shadow of the law' although they are legally non-binding and informal policy tools. Industry often tried to pre-empt government legislation by offering a VA instead. The use of VAs can be traced to the beginnings of German environmental policy although their importance increased significantly when a Centre-Right (CDU/CSU/FDP) coalition government adopted a coalition agreement in 1994 which stated a general preference for VAs above traditional regulatory instruments (UBA, 1999). Germany's first ever Red-Green (SPD/Greens) coalition government, which came to power in 1998, was initially sceptical about VAs but later accepted their usefulness, especially for achieving Germany's ambitious climate change emission reduction targets. The EU, which has made use of VAs only very sparingly (Mol *et al.*, 2000; Jordan *et al.*, 2001), had little impact on German VAs although some of them have been overwritten by EU legislation, as in the case of the end-of-life vehicles directive (2000/53/EC).

Germany was the first country in the world to adopt a national eco-label in 1978. This voluntary informational device influenced the EU's eco-label scheme which was adopted in 1992. However, EU voluntary informational devices such as the eco-audit and management system were initially viewed with scepticism by the German government. German companies nevertheless made up about two-thirds of all eco-audit applications in the EU during the first few years of the eco-audit coming into effect (Knill and Lenschow, 2000; Kraack *et al.*, 2001).

The adoption of eco-taxes in Germany has been affected by the EU both in terms of its content and timing. In 1999 an ecological tax reform was adopted by a Red-Green coalition government (Reiche and Krebs, 1999). Its implementation had to be postponed by three months in order to allow for alterations which took into account objections raised by the Commission about exemptions for the manufacturing industry (interviews in 2001). The previous Centre-Right government had refrained from adopting a national eco-tax due to fears that this would create a competitive disadvantage for German industry. Instead it pushed for the adoption of an EU-wide carbon dioxide/energy tax (Wurzel, 1996). In 2000, the main opposition parties (CDU/CSU and FDP) demanded the abolition of the ecological tax reform but failed to gain the necessary majority within parliament for such a step. The ecological tax reform was continued after the re-election of the Red-Green coalition government in 2002

although public support for this policy measure has remained low.

The Commission's proposal for an EU-wide emission trading system to cut climate change gases was the main driving force behind the German government's decision to set up a national emission trading working group in early 2001 (Wurzel *et al.*, 2003c). In the 1990s, BMU officials made three attempts to set up small-scale pilot schemes. However, these efforts came to no avail due to industry opposition (interview in 2001). Germany's chemical industry in particular is opposed to tradable permits and instead favours VAs as 'tried-and-tested instruments' (interviews, 2001). Germany did not belong to the environmental pioneers (such as Denmark, Britain, the Netherlands and Sweden) which set up national emission trading schemes at an early stage in order both to gain practical experience and/or to offer a model for the EU scheme. On the contrary, Germany delayed the EU decision-making process on the Council level when it asked the Danish Presidency to postpone the negotiations within the Environmental Council by several months (interview, 2002).

The influence of the EU on policy instruments in Germany has been a highly variegated one. In the 1970s and 1980s both German and EU environmental policy relied heavily on regulation. The EU's emphasis on regulation was at least partly a result of Germany's successful attempts to upload national environmental legislation to the EU level. The Commission's recent emphasis on procedural measures has led to a partial misfit between German and EU approaches (Héritier *et al.*, 1996; Knill, 2001; Knill and Lenschow, 1998; 2000; Pehle, 1997, 1998).

### *Policy standards*

The EU has acted both as a 'brake and a facilitator (*Bremser and Förderer*)' for national environmental standards (Hartkopf and Bohne, 1983, 169). Broadly speaking, the Europeanisation of German environmental standards can be grouped into three major categories. First, relatively progressive German (draft) standards which were uploaded to the EU level. Examples include the waste oils directive (75/439/EEC), the sulphur content of certain liquid fuels directive (75/716/EEC), the lead in petrol directive (78/611/EEC), the large combustion directive and many car emission directives (Hartkopf and Bohne, 1983, 169; Moltke, 1984, 312). However, usually German standards and/or demands were adopted by the EU only after a certain time lag (which,

in the case of the large combustion directive and the introduction of the three-way catalytic converter, amounted to almost ten years). Moreover the uploaded standards were often subject to modifications which took into account the core demands of EU veto actors such as member governments that acted as environmental laggards (Arp, 1995; Holzinger, 1994; Weale, 1996; Wurzel, 2002). Often this brought about a dilution of the original German standards/demands as many EU environmental laws stipulate exemptions, derogations, phased in deadlines and vague compromises which are open to different (national) interpretations. However, the final EU legislation also often contained additional requirements which went beyond the original German demands because other environmental leader states and the environmentally minded EP tried further to tighten the standards during the EU adoption process. There are therefore very few, if any, EU environmental laws which are solely based on German (draft) legislation (Wurzel, 2002, 2003a, 2003b). This explains why the implementation of uploaded standards has not always been without problems.

Second, EU standards which were downloaded to the national level. Examples include legally binding standards for bathing waters (directive 76/160/EEC), standards against water pollution caused by nitrates from agricultural sources (directive 91/676/EEC) and conservation measures for wild birds (79/409/EEC). Overall the implementation of downloaded standards has caused greater implementation problems on the national level in comparison to uploaded standards. This was the case especially for downloaded standards which required procedural and institutional changes during the implementation process thus generating adaptation pressures on preferred policy styles and traditional national structures.

Third, there is an intermediate category which subsumes those EU policy measures that the BMU (and its allies) would have liked to adopt on the national level but failed to do so due to the resistance of powerful national veto actors such as the Economics Ministry, the Agricultural Ministry and the Chancellor. Examples include certain EU environmental laws on dangerous chemicals, nature protection laws (for wild birds and their habitats) and the end-of-life vehicles directive (2000/53/EC) (see also Hartkopf and Bohne, 1983, 169). However, the BMU's domestic opponents also make use of the EU decision-making arena as can be seen from the following statement by an Economics Ministry official (cited in

Wurzel, 2002, 11): 'Brussels is often our last hope when it comes to toning down some of the extreme measures put forward by the BMU.'

During the 1970s and especially the 1980s, Germany was very successful in uploading guiding principles, policy instruments and domestic standards to the EU level. However, since the 1990s there has been 'a grow-

### 5.3 Policy structures

The core institutional structures of the German environmental policy system were set up by a Centre-Left (SPD/FDP) coalition government for which environmental policy formed part of a wider reform agenda when it came to power in 1969 (Bechmann, 1984; Genschler, 1980; Hartkopf and Bohne, 1983; Jänicke and Weidner, 1997; Müller, 1986; Pehle, 1998; Weidner, 1999; Wey, 1982). The Centre-Left government created special administrative capacities for dealing with environmental problems, adopted an ambitious environmental programme, introduced new policy instruments (including market instruments such as the 1976 waste water levy and the 1978 eco-label) and experimented with novel procedural approaches (such as integrated pollution control). However, when the reform euphoria of the late 1960s and early 1970s came to an abrupt end due to the oil crisis in 1973, German environmental policy entered a 'defensive phase' (Müller, 1986). German environmental policy subsequently again relied more heavily on traditional approaches and instruments. Moreover, in the early 1980s the (environmental) reformers of the 1970s discovered a significant implementation gap on the domestic level (Mayntz, 1980, 1983). The above mentioned implementation gap with regard to EU environmental policy is therefore not unique; there was also an implementation gap with regard to national environmental policy measures.

The institutional structures which were set up to deal with environmental policy during the early 1970s have remained remarkably stable despite the fact that a separate Environmental Ministry (BMU) was set up in 1986. The BMU took over the environmental competences of the Interior Ministry (BMI) which had been the lead department for environmental policy since 1969. The BMI was made up mainly of legally trained officials who felt most comfortable with traditional regulation (interview in 2001). This partly explains why market instruments became more important only after the BMU was set up. The BMI/BMU receives scientific advice from the Federal Environmental Agency (*Umweltbundesamt* -

ing mismatch between EU and German environmental policy preferences' (interview with BMU official in 1999). The adoption of recent procedural measures in particular has placed considerable pressure on domestic (environmental policy and EU policy) structures to which we now turn.

UBA) which is a relatively large agency. The UBA was set up in 1974 and quickly developed into an important actor in German and EU environmental policy due to its technical expertise. The Environmental Expert Council (*Sachverständigenrat für Umweltfragen* - SRU), which was modelled on the American Council of Environmental Experts, has provided independent advice since 1972. Environmental Ministries also exist on the *Länder* level which explains why the BMU is relatively small.

The German debate about domestic environmental policy structures has focused primarily on three aspects (Müller, 1986, 2002; Pehle, 1998; Weale *et al.*, 2000, 203-4). First, whether there should be an independent Environmental Ministry or whether environmental policy can be conducted more effectively by a classic Ministry with more extensive staff and power resources such as the Interior Ministry. Second, whether institutional structures that are largely geared towards the implementation of the BAT principle for a particular environmental medium can take sufficient account of cross-media integrated pollution control. Third, whether the EU's efforts to integrate environmental requirements into other policy sectors (so-called Cardiff process), which re-opened the national debate that had taken place the 1970s about the best inter-departmental co-ordination mechanisms (Hartkopf and Bohne, 1983, 144-50), requires significant adaptation to be made to the administrative structure.

Over time the institutional structures and procedures on the federal level were adapted incrementally in order to cope with the EU's increasing involvement in environmental policy. A small EU coordination unit was set up in the BMU during the 1980s. However, its ability to coordinate the German input into the Environmental Council is limited because most of the EU business - apart from coordination of the German EU Presidency - is left to technical units which act relatively independently. This confirms the view that the BMU perceives EU environmental policy 'mainly as interior environmental policy (*Umweltinnenpolitik*) rather as foreign environ-



mental policy (*Umweltaussenpolitik*)' (interview with BMU official in 1992; see also Genscher, 1980; Hartkopf and Bohne, 1983).

Within the federal government the BMU is 'one of the most Europeanised Ministries' with EU dossiers amounting to about '90 per cent' of some units' work (interview with BMU official in 1992). However, it is difficult to gauge whether the BMU has overall been strengthened or weakened by Europeanisation. On the one hand, the BMU has been strengthened (*vis-à-vis* other federal Ministries as well as the *Länder*) because it is usually the lead department for all EU dossiers which are negotiated within the Environmental Council. Moreover, as was pointed out earlier, the BMU was able to upload to the EU level certain policy problems for which no resolution could be found on the domestic level. However, this must be contrasted with a survey by Heinrich Pehle (1998, 248) which found that 42 per cent of BMU officials think the EU environmental policy hinders German environmental policy.

#### *EU policy co-ordination on the federal level and in Brussels*

German EU policy is co-ordinated according to a two-track system: a policy specialist track and a diplomatic track (Derlien, 2000). Its main features have changed only incrementally since the 1950s. Overall the expert track has become more important, resulting in an increased number of direct contacts between German and EU desk officials as well as German officials and officials from other member states. Wolfgang Wessels (1992, 1997) has therefore identified 'an ever closer fusion' between member state and supranational administrations. Within technical ('low politics') sectors (such as the environment), it is usually the respective functional ministry that acts as lead department. One exception in the environmental field is sustainable development for which the Chancellery has taken on the overall co-ordination role on the domestic level although the BMU co-ordinates Germany's sustainable development strategy on the EU and international level (interviews in 2001 and 2002). The Chancellor and Foreign Minister usually take charge of 'high politics' issues such as Treaty amendments which are negotiated by Intergovernmental Conferences (IGCs). Up until the Maastricht Treaty, the BMI/BMU has been relatively successful in getting its proposed Treaty amendments accepted as German positions. This is partly due to the high level of public environmental awareness in Germany which

makes it difficult for the Chancellor to ignore the BMU during IGCs that usually attract a lot of media attention. Moreover, ministries (such as the Economics Ministry) which are often opposed to the BMU on the domestic level, perceive the EU-wide adoption of 'German' environmental standards and policy principles as the lesser 'evil' compared to a unilateral adoption of these standards and principles.

Until recently, the Economics Ministry took on a post-master role for all EU dossiers to and from Brussels. It also had some residual co-ordination powers with regard to German EU policies. However, following the election of a Red-Green (SPD-Greens) government in 1998, the BMWi's influential European division was moved to the Finance Ministry. This has resulted in a shift towards a more streamlined and cost-conscious approach to EU policy-making (Bulmer *et al.*, 2000, 25). However, after the re-election of the Red-Green coalition government in 2002, the European division was transferred back into the Economics Ministry which was merged with Labour Ministry.

The Economics Ministry and the Foreign Office are well represented in terms of staff in the Brussels-based German Permanent Representation, which is made up of approximately 100 senior civil servants. The same cannot be said for the BMU which has only had its own official(s) within the Permanent Representation since 1993. Until then, EU environmental policy issues (including Presidency business) were very much 'run from Bonn' (interview in 1991). Since the mid-1990s, three BMU officials are based within the Permanent Representation (Demmke and Unfried, 2001; Wurzel, 1995; interviews, 2002).

Germany's EU policy is co-ordinated by ministerial officials in Bonn/Berlin although Permanent Representation officials are closely involved in this process. The Permanent Representation acts mainly as the interface between Brussels and Bonn/Berlin although for some dossiers it has been given considerable freedom of manoeuvre to allow it to exploit its intimate knowledge of the latest twists and turns in the often fast moving EU negotiations.

In 2000 a change of Germany's EU policy co-ordination mechanism took place. It was partly triggered by the political damage caused by Chancellor Schröder's last minute intervention with regard to the end-of-life vehicles directive. However, calls for more effective co-ordination and better representation of German objec-

tives in Brussels had already been mounting prior to this episode (Derlien, 2000; interviews, 2001).

In Autumn 2000, a three stages procedure has been introduced in order to ensure better co-ordination of German EU policy (interviews in 2001). In the first stage, the heads of the European units (or their deputies) in the various Ministries (*Europabeauftragte*) meet approximately once a week. The Foreign Ministry chairs the ('high politics') COREPER II issues while the Finance Ministry chairs the ('low politics') COREPER I issues. In the second stage, the heads of the European divisions (*Europaabteilungsleiter*) or their deputies meet approximately every two weeks. In the third stage, the Junior Ministers for Europe (*Staatssekretäre*) meet about once a month while aiming to resolve the remaining co-ordination problems and to agree on medium term strategic aims. However, according to one official, 'medium term means anything within the next few weeks' (interview in 2001).

An embarrassing episode involving the end-of-life vehicles directive was one of the reasons why these alterations were made to the German EU policy coordination machinery (interview in 2001). During the 1999 German EU Presidency, Chancellor Schröder instructed his Environmental Minister, Jürgen Trittin (Greens), who favoured the proposed measure, to keep the end-of-life vehicles dossier off the Environmental Council's agenda for fear that Germany might be outvoted (Müller, 2002; SRU, 2002; Wurzel, 2000, 2001). Trittin had already agreed in principle to the end-of-life vehicles directive under the 1998 Austrian Presidency. However, frantic lobbying by the automobile industry, which was concerned about the cost implications of the proposed directive, alerted the Chancellor to the proposal. He subsequently overruled Trittin and persuaded - at a very late stage in the EU adoption process - the British and Spanish Prime Ministers to put pressure on their Environmental Ministers in order to help Germany form a blocking minority within the Environmental Council (Wurzel, 2000, 2001). This constituted a rare abuse by a German government of the office of the Presidency which is supposed to act as an honest broker (see Wurzel, 1996, 2000).

In 2002, another unresolved conflict between the Environmental Minister Trittin and Chancellor Schröder threatened to endanger Germany's EU negotiation strategy with regard to the Commission's proposal for a directive on an EU-wide emission trading scheme in order to reduce climate change gases. Trittin favoured

the adoption of a tradable permit scheme while Schröder has remained sceptical. However, in this case, Germany's 'early warning' system (which relied heavily on information gathering from the Permanent Representation) functioned. Germany put the Danish EU Presidency under pressure to postpone a vote on the proposal within the Environmental Council by several months in order to thrash out a number of (domestic and EU) disagreements (interviews, 2002).

Co-ordination may also be difficult because German EU delegations sometimes reach the size of football teams, depending on the allocation of domestic competences (Wurzel, 2002, 61). There have been several occasions when German delegations have spoken with different voices. One of the most spectacular examples took place during the Commission's launch of the Auto-Oil II Programme in 1997. The Commission's aim was to complete the Auto-Oil I Programme by arriving at cost-effective car emission and fuel standards derived from ambient urban air quality (Friedrich *et al.*, 2000). The BMU official who was heading the German delegation strongly condemned the Commission's approach and walked out of the meeting, threatening a German boycott. At the same time, one of his colleagues from the Economics Ministry actually praised the Commission's approach (Wurzel, 2002, 160).

### *The Federal system*

Germany has a long federal tradition. In the environmental policy field the *Länder* have tried to guard their constitutional competences by insisting on the application of the principle of subsidiarity vis-à-vis the federal government and the EU (Bohne, 1992). In the 1970s, the *Länder* successfully defended their national competences for water management and nature protection by blocking a constitutional amendment which would have given the federal government powers similar to those which it had acquired for air pollution, waste management and noise pollution control. As a consequence, environmental policy competences have remained asymmetrical between the *Länder* and federal government which helps to explain why Germany has difficulties in adopting a cross-media approach.

Prior to the 1987 Single European Act (SEA), which introduced explicit environmental provisions into the EC Treaty, the *Länder* frequently claimed that the EU had only insufficient Treaty competences for dealing with environmental issues (Bungarten, 1978; interviews in 1992 and 2001). However, the federal government,

which holds the foreign policy competences, often ignored the opposition of the *Länder* which accused the government of seeking to extend its competences by agreeing to EU environmental legislation. This has often led to a lack of co-operation by the *Länder* during the implementation phase, especially on EU environmental policy measures (such as water legislation and nature protection laws) which fall within their competences on the domestic level. Implementation of EU environmental laws is generally more complex and often more time consuming in federal states compared to centralised states. However, the ECJ has not accepted as legitimate difficulties with internal domestic structures as an excuse for late or incorrect implementation of EU environmental laws.

It is the federal government which will be taken to the ECJ if the *Länder* fail correctly to implement EU environmental laws. Up until the Amsterdam Treaty, which introduced the possibility of fines for member states failing to implement ECJ decisions, the federal government could do little apart from putting political pressure on the *Länder* by, for example, pointing out that Germany's reputation as an environmental leader state and 'good European' member state was at stake. However, since then it has threatened to pass on to the *Länder* any fines imposed at member state level for failure to comply with ECJ judgements. The Commission's insistence on the correct implementation of EU environmental legislation has even lead to unfounded accusations that it wants to set up an 'occupational regime' (*Besatzungsregime*) (Salzwedel, 1989, 49).

## 6 Conclusion

The EU has acted both as a brake and facilitator for German environmental policy (Hartkopf and Bohne, 1983, 169). Germany is a high regulatory state with a relatively dense body of environmental laws. Moreover, it has acted as an environmental leader state during much of the 1980s. The EU's impact on the environmental policy content was therefore initially relatively limited. However, since the early 1990s, Germany's record has become a mixed one. It remains an environmental leader state on issues such as car emission regulations and climate change but has fallen behind on procedural issues such as access to environmental information and environmental impact assessment. The EU's impact has therefore grown accordingly although

The Maastricht Treaty had to be ratified by parliament (*Bundestag*) and the *Bundesrat* (ie. the 'upper house' where the *Länder* are represented). The *Länder* used this opportunity to insist on closer involvement in EU policy-making (including environmental policy-making). In 1992, this triggered a constitutional amendment (Article 23) which obliges the federal government to keep the *Länder* better informed. Moreover, they have been granted the right to represent Germany in the Council on issues which fall within the exclusive *Länder* competences on the domestic level (Bundesrat, 2001; Demmke and Unfried, 2001; Maurer and Wessels, 2001).

In 2001, the *Länder* had 308 representatives for 80 Council and 127 Commission working groups (Bundesrat, 2001, 13). Initially the *Länder* representatives were allocated one or several legislative proposal(s). However, *Länder* representatives are now allocated according to certain themes as the old system turned out to be inefficient. The *Länder* are also represented in the Committee of Regions which, however, has failed to become an influential player on the EU level. Moreover, the *Länder* now all have their own (or joint) offices in Brussels and occasionally compete for access to EU institutions with the federal government. Since the 1990s, the *Länder* have become more competent on European matters (*europafähig*) and developed a more proactive approach towards European integration. Unlike the national parliament (*Bundestag*), which has been one of the losers of the Europeanisation of German environmental policy, the *Länder* have managed to claw back some of the competences from the national executive.

this is least pronounced with regard to substantive technical standards and most significant with regard to procedural measures. The EU has introduced a limited number of new policy principles (such as the principle of shared responsibility) to the German environmental policy discourse while helping to raise the importance of others (such as sustainable development). However, there is disagreement among policy makers in Germany about whether these new principles will lead to a more progressive environmental policy. The BMU and UBA are concerned that some of the procedural measures put forward by the Commission in the 1990s may lead to a weakening of German standards and well established policy principles such as the BAT. Overall the Europe-

anisation process has affected the policy content to a much larger degree than the national structures and style.

The impact of the EU on domestic structures is most evident with regard to the federal system with the *Länder* insisting on a constitutional amendment that grants them the right to be better informed and more closely involved in EU decision-making. However, tensions remain between the federal government and the *Länder* which are concerned about an erosion of their constitutional powers in favour of the national executive and 'Brussels'. Since the late 1990s there has been a moderate centralisation of the German EU policy co-ordination machinery in order to ensure better representation of German interests and to avoid a repeat of the end-of-life vehicles directive episode which damaged both Germany's reputation as a pro-integrationist member state and its reputation as an environmental leader state. Over time the BMU has managed to increase its presence in the German Permanent Representation in Brussels and the Commission as well as Council environmental working groups which is a reflection of the growing importance of the EU for German environmental policy.

Up to the late 1980s, Germany was relatively successful in uploading to the EU level some of its environmental regulatory principles, policy instruments and standards (Héritier *et al.*, 1996; Héritier, 1996; Sbagia, 1996; Vogel, 1995). During this period of time German environmental policy was only moderately affected by Europeanisation which was therefore largely taken for granted. Since the early 1990s, German and EU envi-

ronmental policy have begun to diverge. The resulting partial mismatch has caused considerable friction and forced Germany to readjust the workings of its environmental (and EU) policy structures while also influencing the national policy style.

Up to now, the 'national' policy style has arguably been least affected by the EU. However, there are signs that this may be about to change. Overall the German environmental policy style has remained moderately proactive with a strong emphasis on consensus and consultation. Environmental groups have gained greater access to information due to the EU but largely failed to lobby 'Brussels' for their aims until the 1990s. The EU's emphasis on procedural measures and self-regulation poses a challenge to the more formalistic German environmental policy style that relies heavily on detailed substantive regulation. The BMU and UBA have raised concerns that some of the procedural measures adopted on the EU level could lead to a weakening of German environmental policy.

However, the partial mismatch between national and EU policy style should not be exaggerated. Overall the Europeanisation of German environmental policy has been an incremental and relatively subtle process that initially attracted relatively little scholarly attention until recently. The realisation of the partial mismatch between domestic and EU preferences and approaches in the 1990s has, however, been a relatively sudden one. It has contributed towards the recalibration of the German EU policy that the government undertook to ensure the better representation of German national interests.

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